In the High Court of Uttaranchal, at Nainital.

Special Appeal No. 12 of 2004.

Deepak Kumar S/o Padam Singh Negi,
Resident of Village Siran,
Patwari Circle Gauchar, Tehsil Karanprayag
District Chamoli …. Appellant.

Vs.

1- State of Uttaranchal through
Secretary, Health, Government of
Uttaranchal, Dehradun.

2- Director General,
Medical, Health and Family Welfare,
Uttaranchal, Dehradun.

3- Chief Medical Officer,
Chamoli Gopeshwar …. Respondents.

Sri R.P. Nautiyal, learned counsel for the appellant.

Sri K.P. Upadhyaya, learned Standing Counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 22nd February, 2006.

(Per: Hon'ble B.C. Kandpal, J.)

Judgment and order dated 05-04-2004 passed by the learned Single Judge of this Court in Writ Petition No. 46 (S/B) of 2003, Deepak Kumar versus State of Uttaranchal and others, has been challenged in this special appeal.

2- Brief facts giving rise to this appeal are that the appellant's mother Smt. Mangla Devi was working as an A.N.M. in Primary Health Center, Tharali, District Chamoli, who died during her service on 13-6-2000. After the death of Smt. Mangla Devi, the petitioner/appellant applied for compassionate appointment in the Health Department and he made a representation to the respondents.

The respondent No. 2, i.e., Director General, Medical, Health and Family Welfare, Uttaranchal, Dehradun passed an order on 19-9-2002 appointing the petitioner/appellant a lower division clerk under the respondent No.3, i.e., Chief Medical Officer, Chamoli. The petitioner was required to fulfill all the formalities and present his all certificates before the respondent No.3 at the time of joining his service. Thereafter on 25-9-2002 Chief Medical Officer, Chamoli posted the petitioner/appellant as lower division clerk in the Primary Health Center, Tharali and the petitioner/appellant was directed to join his service on 27-9-2002 at Primary Health Center Tharali. The petitioner was working on his post after joining his service, but on 20-1-2003 respondent No.2, i.e., Director General, Medical, Health and Family Welfare, Uttaranchal, Dehradun cancelled the appointment of the petitioner/appellant on the ground that earlier the affidavit given by his father in the department was found to be false and, therefore, the petitioner/appellant had violated Rule-2 of Dying in Harness Rules, 1974.

3- The petitioner/appellant challenged the order dated 20-1-2003 before the High Court, by way of the writ petition.

4- In the writ petition counter and rejoinder affidavits were exchanged. Thereafter the learned Single Judge decided the writ petition by order dated 05-04-2004. The learned Single Judge dismissed the petition and confirmed the order of cancellation of appointment.

5- Feeling aggrieved by the aforesaid impugned judgment, this special appeal has been preferred.

6- We have heard learned counsel for the parties and perused the record.

7- The writ petition filed by the petitioner/appellant shows that he was living with his deceased mother and he did not have any information with regard to the affidavit, if any, given by his father in the department earlier. The petitioner/appellant, therefore, contended in the writ petition that he in fact did not violate Rule-2 of Dying in Harness Rules, 1974.

8- The counter affidavit filed by the respondents show that Padam Singh Negi, the father of the petitioner/appellant in his

affidavit concealed deliberately that no member of the family was in government service. It has also been reiterated in the counter affidavit that the father of the petitioner was posted in government service as Assistant Teacher L.T. Grade in Government Inter College, Alkapuri, District Chamoli, therefore the petitioner/appellant was not entitled to be appointed in a government job. The respondents have also filed the Dying in Harness (Amended) Rules, 1999 and have averred that the petitioner was not entitled to be appointed under these rules as he obtained the service by making a false representation.

9- The petitioner/appellant in his rejoinder affidavit has reiterated that he and his deceased mother were living separately from the father of the petitioner and Smt. Mangla Devi, the mother of the petitioner, nominated the petitioner her nominee for all her death-cum-retirement benefits. It has also been reiterated in the rejoinder affidavit that the father of the petitioner had been living with his another wife Smt. Manju Negi, hence the petitioner was fully dependent upon his deceased mother Smt. Mangla Devi. It has also been stated therein that the father of the petitioner was not having good relationship with his deceased mother and was living separately for the last 15 years. The petitioner has filed the documents in support of his averment made in the rejoinder affidavit. We have considered all the documents available on the record. We are of the definite view that it cannot be a case of false representation on the part of the petitioner/appellant. In view of the facts reiterated in the rejoinder affidavit, it can be safely inferred that the petitioner/appellant was dependent upon his mother Smt. Mangla Devi. The fact that deceased Smt. Mangla Devi nominated the petitioner/appellant her nominee for all her death-cum-retirement benefits, clearly indicates that the petitioner/appellant was living with his mother. The certificate issued by the Gram Pradhan, annexed as Annexure-2 to the rejoinder affidavit, also indicates that the petitioner/appellant was living with his mother and Padam Singh Negi, father of the petitioner, was living with another lady Smt. Manju Negi. Hence under these circumstances it is quite clear that

the petitioner/appellant was solely dependent upon his deceased mother Smt. Mangla Devi.

10- The another important aspect which is involved in this case is that the order cancelling the appointment of the petitioner/appellant dated 20-1-2003 has been passed in an arbitrary manner as there is nothing on record which may reveal that before passing the impugned order dated 20-1-2003, cancelling the appointment of the petitioner, any opportunity of hearing or show cause notice had ever been given to the petitioner. It is a golden rule that before issuing any adverse order against any one, show cause notice or any opportunity of being heard, is to be provided to that person, but in the instant case the respondent had neither issued any show cause notice to the petitioner/appellant, nor afforded any opportunity of being heard. The order, cancelling the appointment of the petitioner/appellant, is therefore bad in the eyes of law.

11- It is not a case where any other person had been given the job in place of Smt. Mangla Devi deceased. It is also not a case of impersonation by the petitioner with regard to any material fact. The petitioner had been given the job on compassionate ground in place of his mother with whom he was dependent.

12- It is worthy to mention here that the respondent has filed the true copy of the Dying in Harness Rules 1974 as amended in 1999 and para -5(1) of these rules shows that if a government servant dies during the course of his service, then such a member from his family, who is neither in the job of Central Government nor State Government nor in any Department or Corporation controlled by the Central or State Government, will be given appointment on compassionate ground in case if he makes the representation in this regard. In the instant case the respondent has not come with a version that the petitioner had already been serving either in Central or State Government or in any Undertaking or Corporation controlled by the Central or State Government.

13- The Hon’ble Apex Court has categorically held in a catena of decisions that the compassionate appointment is to be given to a person to enable the family of the deceased government employee to face the immediate and sudden financial crisis and to avoid the

family falling into destitute. In the instant case as we have already held that the petitioner/appellant was solely dependent upon his deceased mother Smt. Mangla Devi, as his father had already remarried with another lady Smt. Manju Negi. The petitioner/appellant was also living with his mother for the last several years as his father did not have any relation with his mother and was living separately.

14- For the reasons stated above, we are of the opinion that the judgment dated 05-04-2004 passed by the learned Single Judge, is liable to be set aside.

15- Accordingly the special appeal is allowed. The judgment and order dated 05-04-2004 passed by the learned Single Judge of this Court in Writ Petition No. 46(S/B) of 2003 is set aside. Consequently the order dated 20-01-2003, cancelling the appointment of the petitioner/appellant, passed by the respondent No.2, is also quashed.

(B.C.Kandpal, J.) **(P.C. Verma, J.)**

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